

February 24, 2012

CEQA Guidelines Update  
C/O Chris Calfee  
1400 Tenth Street  
Sacramento, CA 95814

**RE: Draft CEQA Guidelines for a “Streamlined Review Process for Infill Projects”**

Dear Mr. Calfee,

The Nature Conservancy (Conservancy) appreciates the opportunity to provide comments on the draft CEQA Guidelines for a “streamlined review process for infill projects.” The Conservancy is a private, non-profit organization with over 130,000 members in California; the organization relies upon science-based planning and decision-making to meet its mission of protecting biodiversity and the lands and waters that support it. We greatly appreciate the spirit of openness and collaboration with which staff at the Office of Planning and Research (OPR) have approached this process and solicited stakeholder input.

The draft guidelines will implement SB 226 (Chapter 469, Statutes of 2011) to expedite infill projects that reduce greenhouse gas (GHG) emissions. The Conservancy ultimately supported SB 226 because we believed it would incentivize development consistent with the Sustainable Communities and Climate Protection Act of 2008 (SB 375 – Chapter 728, Statutes of 2008) and divert development pressure away from valuable open-space and agricultural lands resulting in benefits to the environment, reductions in GHG emissions, and flexibility in adapting to the impacts of climate change.

The Conservancy, along with the California Infill Builders Association, even co-authored an opinion piece that ran in the San Jose Mercury News on September 26, 2011 (“Bill Would Protect Environment, Help Economy”) urging the Governor to sign SB 226 into law (see attached).

We continue to support the goal of SB 226 and want to ensure that it is implemented in a way that follows through on its original intent: to incentivize infill projects that preserve important natural resource and open-space areas, help the state meet its GHG reduction goals, and stimulate the economy. For these reasons, we appreciate OPR’s consideration of the following general and specific comments on the draft guidelines.

General Comments:

- 1) Overall, the draft guidelines provide a good framework for how to identify infill projects that will reduce GHG emissions, drive development away from valuable agricultural and ranch lands, help to protect open space and habitat areas and are, therefore, worthy of expedited environmental review.
- 2) The use of Vehicle Miles Traveled (VMT) as the primary metric for determining whether a given project is eligible for expedited environmental review under the guidelines is appropriate and will provide flexibility for different types of projects while resulting in positive environmental outcomes.

- 3) We are pleased that the draft "Narrative Explanation" acknowledges that one of the reasons for incentivizing infill development is to avoid "the consumption of open space" and "destruction and fragmentation of wildlife habitat" (Narrative Explanation, p. 3); however, prior to supporting SB 226 the Conservancy was clear that if new development projects on "greenfields" were to receive streamlining, that was a non-starter. For this reason, we would like to see this goal figure more prominently in the draft guidelines and provide specific suggested changes to address this below.
- 4) Integration of specific climate-related language to ensure consistency with the goal of creating "sustainable communities" is vital. Emphasis should be placed on the avoidance of activities within fragile coastal areas and areas subject to increased fire threat. In an era of climate change, CEQA streamlining cannot be allowed to become a shield to advance the building in undeveloped open space areas on our shoreline. The protection of natural undeveloped areas is a central priority. As the state declares on its [climate change web portal](#), "Climate change is expected to have significant, widespread impacts on California's economy and environment. California's unique and valuable natural treasures – hundreds of miles of coastline, high-value forestry and agriculture, snow-melt fed fresh water supply, vast snow and water fueled recreation opportunities, as well as other natural wonders – are especially at risk."

#### Comments on Narrative Explanation:

- 1) Proposed change under "Why Promote Infill in CEQA" (p. 2): "Infill development ... is a key strategy for efficient growth *as the State works to comprehensively integrate land use planning, transportation investments, and climate policy.*" This more explicitly states the reasons for promoting infill.
- 2) Under "Alignment with State Policy" (p. 6), the narrative should also note that the infill vision promoted by SB 226 is also consistent with the State's Climate Adaptation Strategy (California Natural Resources Agency, 2009) that recommends new development projects avoid areas that will require significant new protection from sea-level rise, storm surges, or coastal erosion during their expected life.
- 3) Under "Policy Objectives and Trade-Offs," (p. 9), one of the objectives highlighted should be "*preservation of agricultural, forest, and natural lands;*" these resources are specified in the state planning priorities<sup>1</sup> as referenced in SB 226.

#### Comments on Proposed State CEQA Guidelines:

- 1) Section 15183.3 (b)(1): one criterion to determine whether a project is eligible for streamlining is that the site be "surrounded at least seventy-five percent by qualified urban uses."<sup>2</sup> This is a critical trigger in determining an infill project's eligibility for streamlining, but this definition may allow parcels that are merely zoned as residential, commercial, institutional, or for transit facilities to count as "qualified urban uses" and, therefore, incentivize development on greenfields on the urban/suburban fringe. This standard should be clarified to ensure that parcels surrounding the infill project must be "developed" or "previously developed." Making this section consistent with Public Resources Code, Section 21061.3

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<sup>1</sup> Government Code, Section 65041.1

<sup>2</sup> Public Resources Code, Section 21072: "any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses."



would eliminate this potential loophole: "(a)(1) The site is immediately adjacent to parcels that are **developed** with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are **developed** with qualified urban uses (emphasis added)."

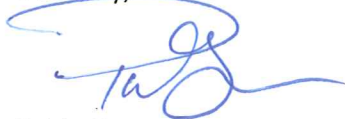
- 2) Proposed change to Section 15183.3(e)(1): "Infill project" includes the whole of an action consisting of residential, commercial, retail, transit station, school, or public office building uses, or any combination of such uses that meet the eligibility requirements set forth in subdivision (b). No more than one half of the project area of projects consisting of commercial and retail uses may be used for parking, *and no part of the site should require significant new protection from wildfires, flooding from sea-level rise, storm surges, or coastal erosion during the its expected life.*

Comments on Appendix M:

- 1) Under "Performance Standards Applying to All Project Types" (p. 1), one requirement is that "all projects shall include renewable energy components, such as solar rooftops, **where feasible** (emphasis added)." While we appreciate the intent and support the inclusion of renewable energy components in infill projects, "where feasible" is not a meaningful standard. We understand that renewable energy facilities may not be practicable for all infill projects, but believe further guidance or examples are necessary to indicate how this will act as a meaningful filter for determining a project's eligibility for streamlining.
- 2) The guidelines allow projects that exceed 100 percent of regional per capita VMT to take advantage of the CEQA streamlining. We believe this is inappropriate and that incentivizing projects that will exceed the regional per capita VMT is contrary to the goals of SB 226 and could result in development of valuable agricultural, open space, and natural lands. For this reason we recommend that the guidelines be changed so that projects in high VMT zones do not receive the benefit of CEQA streamlining. We do not mean to suggest that no new development should occur in high VMT zones, just that there should be no incentive for doing so.

Thank you for your consideration of these comments. The Conservancy looks forward to continuing to work with OPR and the Natural Resources Agency to eliminate barriers to good infill projects that benefit the environment and economy.

Sincerely,



Pablo Garza  
Associate Director, State Policy & External Affairs  
The Nature Conservancy

CC: Secretary John Laird, Natural Resources Agency  
Senator Joe Simitian

# San Jose Mercury News

September 27, 2011

## **BILL WOULD PROTECT ENVIRONMENT, HELP ECONOMY**

Author: Jay Ziegler and Meea Kang

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Next year, California's population will surpass 40 million. That's twice as many people as were here in 1970 when the state passed its landmark resource protection law, the California Environmental Quality Act (CEQA).

CEQA, which governs the environmental review process for most construction and infrastructure projects, has been at the heart of some notable achievements, such as saving Mono Lake and looking at the cumulative impacts of proposed development. While the law has protected the environment by improving planning processes and stopping many ill-conceived projects, critics can fairly point to cases where competitors have used it to obstruct projects, even where the environmental benefits and job creation opportunities were obvious.

Forty years later, it's time to make changes to CEQA to better align the law that governs most growth decisions in the state with 21st century challenges, like climate change and how to support a rapidly growing population.

One such reform is on Gov. Jerry Brown's desk now. He should sign it.

Senate Bill 226 by Senators Joe Simitian, D-Palo Alto, and Juan Vargas, D-San Diego, allows infill projects -- that is, projects within already-developed areas -- that meet state-of-the-art environmental standards to take advantage of a streamlined review process. The bill rewards applicants whose projects have the best environmental features with faster and lower cost approval, and it provides other projects with a meaningful incentive to improve. It also eliminates duplicative levels of review, eliminating waste and allowing sponsors of infill projects to take advantage of previous environmental analyses and rely on good local planning.

Californians face a choice: do we foster a new, smart-growth strategy or continue to treat infill development as the conventional path-of-least-resistance growth into open space? Smart growth is a community-focused strategy to reduce energy use, minimize our carbon footprint and reduce impacts on the natural resources that sustain us and the economy.

California has adopted path-breaking legislation, including SB375 of 2009, which encouraged infill development. Simitian's and Vargas' bill helps achieve the promise of SB375 by ensuring that redundant levels of review and the threat of expensive lawsuits don't discourage the types of building we know are most effective at reducing energy consumption and carbon emissions.

The environmental quality act is not very good at distinguishing the development of big-box stores on green fields, miles from population centers, from desperately-needed housing close to jobs and transit in cities and towns. We need to provide incentives for a long-term smart-growth strategy that puts our state on a path to leadership in the development of a sustainable energy, water use, air quality and planning strategy to enhance our quality of life and our reputation as a place to do business.

Forty years from now, there will be about 60 million Californians. It's going to take a strong economic foundation and the ability to use resources efficiently to support so many people. If we're going to support the attributes that make California such a desirable place to live, we're going to have to reduce our impact on the natural resources that make our state unique.

Our laws should be responsive to the challenges we face -- addressing climate change, reducing our footprint on the land, cleaning the air we breathe and the water we drink and ultimately providing a more sustainable way of life. SB226 is a worthy step in that direction.

JAY ZIEGLER is the director of policy at The Nature Conservancy in California.

MEEA KANG is president of the California Infill Builders Association, a trade association of builders and developers that promotes sustainable land-use policies. They wrote this for this newspaper.

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